



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,726	08/10/2001	Daniel William Britton	38961-14	4810

7590 11/24/2003

BENNETT JONES LLP
4500 Bankers Hall East
855-2nd Street SW
Calgary, AB T2P 4K7
CANADA

[REDACTED] EXAMINER

LERNER, AVRAHAM H

ART UNIT	PAPER NUMBER
3611	

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s) BRITTON ET AL.
	09/925,726 Examiner Avraham Lerner	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 29-44 is/are withdrawn from consideration.
- 5) Claim(s) 1-21,25-28 and 45-57 is/are allowed.
- 6) Claim(s) 22 is/are rejected.
- 7) Claim(s) 23 and 24 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Hanson et al. (U.S. Patent No. 6,086,086). Hanson et al. discloses a stroller having all elements as claimed, including a forward end and a rear end and a long axis extending through the forward and rear ends, the stroller comprising a plurality of wheels for supporting the stroller including at least one front wheel (22) positioned forward of the stroller center of gravity, a left rear wheel and a right rear wheel (28); a frame (12) supported by the wheels including front wheel supports securing and extending rearwardly from the at least one front wheel, a left rear support securing

and extending upwardly from the left rear wheel, a right rear support securing and extending upwardly from the right rear wheel; and a handle bar (44) for grasping and moving the stroller including a gripping portion, the handle bar being connected into the frame by a pivotal connection (62) and the pivotal connection being incorporated into a lever mechanism (handle 44), and a seat (14) supported by the frame. Note that regarding the language that the lever mechanism is for driving the handle bar against a fulcrum to permit handle height adjustment with respect to the stroller, it has been held that the recitation that an element is "for" performing a function is not a positive limitation but only requires the ability to so perform. It is intended use, and does not constitute a limitation in a patentable sense. See *In re Hutchison*, 69 USPQ 138 and *In re Schreiber* (CAFC) 44 USPQ2d 1429.

3. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Chen (U.S. Patent No. 6,299,194 B1). Chen discloses a stroller having all elements as claimed, including a forward end and a rear end and a long axis extending through the forward and rear ends, the stroller comprising a plurality of wheels for supporting the stroller including at least one front wheel (25) positioned forward of the stroller center of gravity, a left rear wheel and a right rear wheel (28); a frame supported by the wheels including front wheel supports securing and extending rearwardly from the at least one front wheel, a left rear support securing and extending upwardly from the left rear wheel, a right rear support securing and extending upwardly from the right rear wheel; and a handle bar (23) for grasping and moving the stroller including a gripping portion, the handle bar being connected into the frame by a pivotal connection (431) and the pivotal connection being incorporated into a lever mechanism (231), and a seat inherently supported by the frame. Note that regarding the language that the lever mechanism is for driving the handle

bar against a fulcrum (e.g. 431) to permit handle height adjustment with respect to the stroller, it has been held that the recitation that an element is "for" performing a function is not a positive limitation but only requires the ability to so perform. It is intended use, and does not constitute a limitation in a patentable sense. See *In re Hutchison*, 69 USPQ 138 and *In re Schreiber* (CAFC) 44 USPQ2d 1429.

Allowable Subject Matter

4. Claims 1-21, 25-28, and 45-57 are allowed.
5. Claims 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claim 22 have been considered but are moot in view of the new ground(s) of rejection.
7. Claims 29-44 remain withdrawn from consideration, and should be canceled.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3611

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avraham Lerner whose telephone number is (703) 308-0423. The examiner can normally be reached on M-F (8:15-5:45) first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

**AVRAHAM LERNER
PRIMARY EXAMINER**
A. Lerner 11/20/03

November 20, 2003